

# PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California

Date: March 16, 2004

Resolution No. L-310

## **RESOLUTION**

**RESOLUTION AUTHORIZING DISCLOSURE OF COMMISSION CONSUMER SERVICES DIVISION (UTILITIES SAFETY BRANCH) RECORDS PURSUANT TO PUBLIC RECORDS ACT REQUEST BY DENNIS SHERWIN ON BEHALF OF RONAK KOTECHA, SEEKING DISCLOSURE OF COMMISSION STAFF INVESTIGATIVE RECORDS RELATING TO AN EXPLOSION IN A SOUTHERN CALIFORNIA EDISON VAULT IN NORWALK, CALIFORNIA, ON MAY 11, 2003. ELECTRIC INCIDENT REPORT E20030511-02.**

## **BACKGROUND**

Dennis J. Sherwin of the Law Offices of Rose, Klein & Marias LLP requested Commission records concerning the Commission's investigation of an electric accident involving Ronak Kotecha on May 11, 2003 in Norwalk, California. Mr. Sherwin represents Mr. Kotecha, a minor child, in litigation arising from this incident.

Commission staff counsel wrote to Mr. Sherwin regarding this records request, informing him that Commission investigation records could not be released because Public Utilities Code § 583 and General Order 66-C limit staff's disclosure of the accident records at issue in the absence of a Commission order, or disclosure in the course of a formal hearing or proceeding.<sup>1</sup>

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<sup>1</sup> Public Utilities Code § 583 states: "No information furnished to the commission by a public utility . . . shall be open to public inspection . . . except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding . . ."

Mr. Sherwin appealed to the full Commission for disclosure of the requested records, pursuant to General Order 66-C § 3.4.<sup>2</sup>

Relevant records include a draft incident investigation report dated January 22, 2004; 17 photographs; correspondence between Commission staff and Southern California Edison Company; correspondence from an attorney representing another individual allegedly injured in the May 11, 2003 incident; incident reports submitted by the Southern California Edison Company; circuit map; inspection and facilities inventory records; crew logs; interruption report; Los Angeles Fire Department Public Incident Report; circuit patrol history; and similar records.

## **DISCUSSION**

The requested investigation records and reports are “public records” as defined by the California Public Records Act (PRA). (Government Code § 6250 et seq.) The general policy of the PRA favors disclosure of public records, and a justification for withholding a public record in response to a PRA request must be found either among the specified exemptions listed in the Act, or a showing that, on the facts of a particular case, the public interest in confidentiality clearly outweighs the public interest in disclosure. In response to a subpoena for Commission records, a justification for withholding records must be based upon a privilege, since PRA exemptions have no impact on discovery. (Government Code § 6260.) Commission decisions regarding disclosure of public records must be consistent with the PRA and relevant discovery law.

The Commission exercised its discretion under Public Utilities Code § 583, and implemented its responsibility under Government Code § 6253.4 (a), by adopting guidelines for public access to Commission records (General Order 66-C). These guidelines were adopted in Resolution L-151 “[i]n compliance with the legislative mandate and policy expressed in” the PRA, and are required by Government Code § 6253.4 (b) to be consistent with the PRA and reflect the intent of the Legislature to make agency records accessible to the public. The Commission must implement General Order 66-C, and other disclosure regulations or decisions in a manner consistent with the PRA and other laws governing disclosure of records and information.

General Order 66-C § 1.1 provides that Commission records are public, except “as otherwise excluded by this General Order, statute, or other order, decision, or rule.” General Order 66-C, § 2.2 (a) provides the most relevant exclusion, for “Records of

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<sup>2</sup> General Order 66-C §3.4 states:

A person wishing to review records, which are not open to public inspection, may write to the Secretary ..., indicating the records being withheld, and stating the reasons why these records should be disclosed to him. ....

investigations and audits made by the Commission, except to the extent disclosed at a hearing or by formal Commission action.” Safety investigation records are subject to one or more PRA exemptions, Evidence Code privileges, and/or other legal restrictions on disclosure. For example, Government Code § 6254 (f) exempts investigatory and security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes;<sup>3</sup> and Government Code § 6254 (k) exempts records, the disclosure of which is prohibited by law, or which are subject to a state or federal privilege against disclosure, including those listed in the Evidence Code. The primary Evidence Code privileges applicable to Commission incident investigation records include the lawyer client privilege (Evidence Code § 950 et seq.), and the official information privilege (Evidence Code § 1040). In some cases, other privileges or other restrictions on disclosure may also apply.

General Order 66-C § 2.2 (a), limits staff’s ability to disclose Commission safety investigation records in response to a PRA request or a subpoena in the absence of a Commission order authorizing disclosure or disclosure during the course of a proceeding. For this reason, staff denies most initial PRA requests, and subpoenas, seeking such records, notes the General Order 66-C § 3.4 option for appealing to the Commission for disclosure of the records, and, if an appeal is received, prepares a draft resolution for the Commission’s consideration. Public Utilities Code § 583 does not in any way preclude Commission disclosure of information received from utilities. (See, e.g., *Re Southern California Edison* [Decision (D.) 91012-019] (1991) 42 CPUC 2d 298, 301; see also, *Southern California Edison Company v. Westinghouse Electric Corporation*, 892 Fed. 2d 778, 783 (9<sup>th</sup> Cir., 1989).) Nor does General Order 66-C, which in § 3.4 expressly notes the ability to appeal of an initial denial of access to records.

The fact that records may fall within a PRA exemption does not bar disclosure by the Commission. Except for the exemption for records the disclosure of which is barred by law, most PRA exemptions are discretionary, rather than mandatory, and the Commission need not assert such exemptions when it finds disclosure is appropriate. (Government Code § 6253 (e); *Black Panthers v. Kehoe* (1974) 42 Cal. App.3d 645, 656.)

Applying the relevant statutes to the facts of this case argues for the disclosure of the requested investigation records. One person suffered injuries allegedly due to an event

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<sup>3</sup>Among other things, Government Code § 6254 (f) permits agencies to engage in confidential investigative deliberations before initiating formal enforcement proceedings. See, e.g., *Hanyie v. Superior Court* (2001) 26 Cal.4<sup>th</sup> 1061. The Commission enforces safety laws directly and cooperates with law enforcement agencies in investigations that may result in civil or criminal sanctions. (See, e.g., Public Utilities Code §§ 2106-2112.) Commission safety investigations are primarily undertaken to determine: 1) whether a regulated entity has acted unlawfully; 2) what caused an incident; and 3) what steps may be taken to avoid future incidents. To the extent our investigation records are compiled for law enforcement purposes, they are exempt from mandatory disclosure under Government Code § 6254 (f). The Commission is not a traditional law enforcement agency such as a police department, and thus is not subject to the mandatory limited disclosure requirements of Government Code § 6254 (f)(2).

involving the facilities of the Southern California Edison Company, and disclosure of the investigation records may assist in the settlement of litigation resulting from the accident. (See, Order Denying Rehearing of Resolution L-240 (1993) 49 CPUC 2d 241, 243.)

There are no compelling reasons to withhold the requested information. People who are injured are entitled to pursue discovery regarding the cause of the injury. We have during the past ten years ordered disclosure of records of numerous completed safety investigations, finding that disclosure of such records will not interfere with the Commission's investigations, but may lead to discovery of admissible evidence and aid in the resolution of litigation regarding the accident/incident under investigation. Most of these resolutions responded to disclosure requests and/or subpoenas from individuals involved in electric or gas utility incidents (accidents), the families of such individuals, the legal representatives of such individuals or families, or the legal representatives of a defendant, or potential defendant, in litigation related to an accident/incident.

We have found that Public Utilities Code § 315, which expressly prohibits the introduction of accident reports filed with the Commission, or orders and recommendations issued by the Commission, "as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property," offers utilities sufficient protection against injury from the release of requested investigation records.

The Draft Resolution of the Legal Division in this matter was mailed to the parties in interest on February 13, 2004, in accordance with PU Code § 311(g). No comments received.

### **FINDINGS OF FACT**

1. Dennis J. Sherwin of the Law Offices of Rose, Klein & Maria LLP requested the Commission's investigation report concerning an incident on May 11, 2003 involving an explosion at a Southern California Edison Company vault located on Pioneer Blvd. in Norwalk, California. Mr. Ronak Kotecha was allegedly injured by the explosion. Mr. Sherwin represents Mr. Kotecha in litigation arising from this incident.
2. The information in the requested Commission investigation records concerns an injury sustained by Mr. Kotecha and appears relevant to litigation concerning the incident in which the injury was sustained.
3. The Commission's investigation of the May 11, 2003 accident is closed, and thus the disclosure of the requested records would not compromise the investigation.
4. The public interest favors disclosure of the requested investigation records.

**CONCLUSIONS OF LAW**

1. The material in the requested investigation file and report are public records as defined by the California Public Records Act (Government Code § 6250 et seq.).
2. The general policy of the California Public Records Act favors disclosure of records.
3. Justification for withholding a public record in response to a Public Records Act request must be based on specific exemptions in the Public Records Act or upon a showing that, on the facts of a particular case, the public interest in nondisclosure clearly outweighs the public interest in disclosure. (Government Code § 6255.)
4. Justification for withholding a public record in response to a subpoena or other discovery procedure must be based upon a privilege against disclosure, since Public Records Act exemptions have no effect on discovery. (Government Code § 6260.)
5. The Commission has exercised its discretion under Public Utilities Code § 583 to limit staff disclosure of investigation records in the absence of formal action by the Commission or disclosure during the course of a Commission proceeding. (General Order 66-C § 2.2 (a).)
6. Public Utilities Code § 583 does not limit the Commission's disclosure of records.
7. Public Utilities Code § 315 prohibits the introduction of accident reports filed with the Commission, or orders and recommendations issued by the Commission, "as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property."

**ORDER**

1. The request for disclosure of the Commission's records concerning the investigation of an incident that occurred in Norwalk, California, on May 11, 2003, when Mr. Ronak Kotecha was allegedly injured in the explosion of a Southern California Edison Company vault on Pioneer Blvd., is granted. These records will be provided upon receipt by the Commission of the appropriate copying fees.

**March 16, 2004**

2. The effective date of this order is today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of March 16, 2004 the following Commissioners approved it:

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WILLIAM AHERN  
Executive Director

MICHAEL R. PEEVEY  
President  
CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners